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May 17, 2024

*Via ECF*

The Honorable P. Kevin Castel  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *In re Google Digital Advertising Antitrust Litigation*, No. 1:21-md-03010 (PKC)  
*Associated Newspapers Ltd. et al., v. Google LLC, et al.*, No. 1:21-cv-03446 (PKC)  
*Gannett Co., Inc. v. Google LLC, et al.*, No. 1:23-cv-05177 (PKC)

Dear Judge Castel:

We write on behalf of Defendants Google LLC and Alphabet Inc. (collectively, “Google”) to respectfully request that this Court confirm Google has no present obligation to answer Daily Mail’s and Gannett’s recently filed amended complaints. *See* ECF Nos. 794, 795. Pursuant to Your Honor’s Individual Practices, we note that there is a conference scheduled for May 21, 2024. *See* ECF No. 791.

On March 15, 2024, Google sought leave to file motions to dismiss Daily Mail’s and Gannett’s state law claims. *See* ECF No. 719. On March 21, Daily Mail and Gannett responded by requesting leave to amend their deficient state law claims and proposing this Court defer ruling on the sufficiency of those claims until the summary judgment stage. ECF No. 728 at 1-2. The Court directed Daily Mail and Gannett to submit their proposed amended complaints, and, on the basis of their implicit representation that “the amendments will not expand the scope of discovery,” granted leave for Daily Mail and Gannett to “file the submitted proposed amended pleadings.” Pre-Trial Order No. 12, ECF No. 784 (“PTO 12”). As a result of this ruling, Google’s challenge to the sufficiency of Daily Mail’s and Gannett’s amended complaints under Federal Rule of Civil Procedure 8, 9, and 12 will be addressed at the summary judgment stage—just as Daily Mail and Gannett expressly requested.

Given that the Court deferred until the summary judgment stage Google’s challenge to the sufficiency of Daily Mail’s and Gannett’s state law claims, Google proposed to Daily Mail and Gannett that the parties file a stipulation confirming that the deadline for Google to file amended answers addressing those claims would be negotiated if and as necessary following Google’s future Rule 12 challenge. *See* Ex. A (May 13-16, 2024 Google correspondence with Daily Mail); Ex. B (May 13-16, 2024 Google correspondence with Gannett). Daily Mail and Gannett responded by demanding that Google answer their newly filed amended complaints as if all such claims had already survived a motion to dismiss. *See* Ex. A; Ex. B. But Google should

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not have to answer allegations it has not had an opportunity to test under Rule 12—particularly after Daily Mail and Gannett expressly and successfully requested that the Court defer briefing and consideration of Google’s Rule 12 motion. *Cf. Glob. Network Commc’ns, Inc. v. City of New York*, 458 F.3d 150, 155 (2d Cir. 2006) (“The purpose of Rule 12(b)(6) is to test, in a streamlined fashion, the formal sufficiency of the plaintiff’s statement of a claim for relief *without* resolving a contest regarding its substantive merits.” (emphasis in the original)).

In rejecting the stipulation Google proposed, Daily Mail and Gannett suggested that conducting discovery “without a full answer to [their] allegations and without a full accounting of Google’s alleged defenses” would somehow prejudice them. Ex. A; Ex. B. But Google has already answered the claims that have survived a Rule 12 motion and asserted its defenses thereto—and has separately identified how the amended pleadings that Daily Mail and Gannett filed still fall short of pleading any state law claims. *See* ECF No. 766. Given Daily Mail and Gannett’s representation that the “Google conduct to which Daily Mail’s and Gannett’s proposed amendments relate have been part of both cases since they were filed three years and one year ago, respectively,” ECF No. 757 at 1, which this Court accepted in deferring briefing on a Rule 12 motion, Daily Mail and Gannett cannot now complain that they are in need of further responsive pleadings.

\* \* \*

For all of these reasons, Google respectfully requests this Court confirm that Google has no present obligation to file yet another pleading responding to the amended complaints filed by Daily Mail and Gannett. *See* ECF No. 794, 795.

Respectfully submitted,

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Alphabet Inc., and YouTube LLC

\*\*Except as to *Associated Newspapers Ltd.*  
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CC: All Counsel of Record (via ECF)